

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-80

In the Matter of

Amendment of Section 73.606(b), RM-8445
Table of Allotments,
TV Broadcast Stations.
(Iron Mountain and Menominee,
Michigan, Wittenberg, Wisconsin
and Ely, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 30, 1994;

Released: July 13, 1994

Comment Date: September 6, 1994

Reply Comment Date: September 21, 1994

By the Acting Chief, Allocations Branch:

1. The Commission considers herein a petition for rulemaking filed by Douglas A. Maszka d/b/a Tri-Cities Television Company ("petitioner"), seeking the substitution of Channel *25 for vacant Channel *17 at Iron Mountain, Michigan, allotment of Channel 31 to Menominee, Michigan, and allotment of Channel 17 to Wittenberg, Wisconsin. Petitioner submitted an engineering analysis in support of the proposal and states its intention to file an application for Channel 31 at Menominee and Channel 17 at Wittenberg.

2. Menominee (population 9,398)¹ seat of Menominee County (population 24,920) is located on Michigan's Upper Peninsula, approximately 70 kilometers (45 miles) northeast of Green Bay, Wisconsin. Wittenberg (population 1,145) in Shawano County (population 37,157) is located in northeastern Wisconsin approximately 37 kilometers (23 miles) southeast of Wausau, Wisconsin. Iron Mountain (population 8,525) seat of Dickinson County (population 26,831) is located on the Upper Peninsula approximately 150 kilometers (93 miles) north of Green Bay.

3. A staff engineering analysis of the proposal indicates that Channel 31 can be allotted to Menominee, Michigan, and Channel 17 can be allotted to Wittenberg, Wisconsin. Both allotments require the substitution of Channel *25

for vacant Channel *17 at Iron Mountain, Michigan. However, it is Commission policy not to make substitutions when other channels are available for allotment without changing channels. Our analysis indicates that Channel 25+ can be allotted to Menominee, Michigan, at a site 17.8 kilometers (11 miles) north of the community and Channel 46 can be allotted to Wittenberg, Wisconsin, at a site 30.7 kilometers (19.1 miles) north of the community.² In the alternative, we will also propose, as requested by petitioner, the allotment of Channel 17- at Wittenberg, Wisconsin, the substitution of Channel *25+ for vacant Channel *17+ at Iron Mountain, Michigan, and the allotment of Channel 31+ at Menominee, Michigan.³ Petitioner is requested, however, to provide specific information explaining why its original proposal requiring the substitution at Iron Mountain, Michigan, is superior as well as any other information regarding the public interest benefits or possible site problems. Canadian concurrence will be requested since the communities are located within 400 kilometers (250 miles) of the U.S.-Canadian border. The proposed allotments of Channel 25 in Menominee, Channel *25 in Iron Mountain and Channel 31 in Menominee will require a plus offset. The proposed allotment of Channel 17 in Wittenberg will require a minus offset.⁴ Further, the offset of Channel *17 in Ely, Minnesota, must be changed from a minus to a plus to accommodate the allotment of Channel 17- at Wittenberg.⁵ Although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed 80 allotments at Menominee, Wittenberg and Iron Mountain are not affected thereby.⁶ The suggested sites place the allotments beyond the required distance of 248.6 kilometers (155 miles) from Milwaukee, Wisconsin, the closest freeze market.

4. We believe the public interest would be served by proposing television allotments to Menominee or Wittenberg, as a first local television service would be provided to either community. Section 73.3555 of the Commission's Rules precludes ownership by the same licensee of two television stations if the Grade B contours of the two stations overlap. If the station at Menominee and Wittenberg were to operate at maximum facilities, a distance of 219 kilometers (136 miles) would be required between the two stations. However, the actual distance between the two restricted sites is only 120 kilometers (75 miles). Therefore, if petitioner is the successful applicant for both channels, one or both stations would be required to operate at limited facilities. Since petitioner is not eligible to file an application for each channel to operate at maximum facilities in both communities, we will seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the communities listed below, to read as follows:

¹ The population figures are taken from the 1990 U.S. Census.

² The coordinates for Channel 25+ at Menominee are 45-16-00 and 87-36-48. The coordinates for Channel 46 at Wittenberg are 45-05-53 and 89-07-31.

³ The coordinates for Channel 31+ at Menominee, Michigan, are 45-16-00 and 87-36-48, the coordinates for Channel 17- at Wittenberg, Wisconsin, are 45-05-00 and 89-10-06 and the coordinates for Channel *25+ at Iron Mountain, Michigan, are 45-49-12 and 88-04-31.M

⁴ "A station with a plus or minus offset is required to operate

with its carrier frequency 10 kHz above or below the normal carrier frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules." *Crandon, Wisconsin*, 3 FCC Rcd 6765 n.1 (1988).

⁵ The coordinates for Channel *17+ at Ely, Minnesota, are 47-54-06 and 91-51-48.

⁶ The Commission has imposed a freeze on new television allotments in certain metropolitan areas. See *Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order*, 52 FR 28346, July 29, 1987.

| Community | Channel No. | |
|----------------------------|-------------|-----------|
| | Present | Proposed |
| OPTION I | | |
| Menominee, Michigan | --- | 25 + |
| OPTION II | | |
| Wittenberg, Wisconsin | --- | 46 |
| OPTION III | | |
| Iron Mountain, Michigan | 8-, *17 + | 8-, *25 + |
| Menominee, Michigan | --- | 31 + |
| OPTION IV | | |
| Iron Mountain, Michigan | 8-, *17 + | 8-, *25 + |
| Wittenberg, Wisconsin | --- | 17- |
| Ely, Minnesota | *17- | *17 + |

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 6, 1994**, and reply comments on or before **September 21, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Douglas A. Maszka d/b/a
Tri-Cities Television Company
600 Vroman Street
Green Bay, Wisconsin 54303

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Com-

mission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.